

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of the Spectrum Sharing Plan Among	)	
Non-Geostationary Satellite Orbit Mobile	)	IB Docket No. 02-364
Satellite Service Systems in the 1.6/2.4 GHz	)	
Bands	)	
	)	
Amendment of Part 2 of the Commission's	)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz for	)	
Mobile and Fixed Services to Support the	)	
Introduction of New Advanced Wireless	)	
Services, including Third Generation Wireless	)	
Systems	)	

To: The Commission

**OPPOSITION OF  
THE BRS RURAL ADVOCACY GROUP TO  
PETITION FOR RECONSIDERATION OF GLOBALSTAR LLC**

The BRS Rural Advocacy Group (the “Group”), a coalition of Multipoint Distribution Service (“MDS”) operators and licensees in rural markets,<sup>1</sup> by counsel, hereby submits this Opposition to the Petition for Reconsideration (“Globalstar Petition”) filed by Globalstar LLC (“Globalstar”) in the above-captioned proceeding.<sup>2</sup> As demonstrated below, if the restrictions proposed by Globalstar on the use of BRS-1 spectrum are adopted, the members of the Group will lose their rights to spectrum licensed exclusively to them, jeopardizing the ability of the Group’s members to continue providing video and broadband services to rural Americans. A far better solution to the interference that will result between

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<sup>1</sup> A list of the Group members, the markets where they operate and their licensed MDS and commercial ITFS spectrum holdings is attached hereto as Exhibit 1.

<sup>2</sup> Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, *Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 13556 (2004) (“*Order*”). Notice of the filing of petitions for reconsideration of the *Order* was published in the Federal Register on October 12, 2004. *See* 69 Fed. Reg. 60626-27 (2004).

CDMA Mobile Satellite System (“MSS”) operators and BRS licensees in the 2496-2500 MHz band would be to eliminate the co-primary allocation for CDMA MSS.

### **Statement of Interest**

In its recent *Fourth Report* to Congress, the Commission “document[ed] the continuation of a positive trend:”<sup>3</sup>

namely, the increasing availability of advanced telecommunications capability to certain groups of consumers – those in rural areas, those with low incomes, and those with disabilities – who stand in particular need of advanced services. Consumers in these groups are of particular concern to the Commission in that they are the doubly vulnerable: that is, although they are most in need of access to advanced telecommunications capability to overcome economic, educational, and other limitations, they are also the most likely to lack access precisely *because* of these limitations.<sup>4</sup>

With respect to rural areas in particular, the Commission observed that:

Rural areas are typically characterized by sparse and dispersed populations, great distances between the customer and the service provider, and difficult terrain. These factors present a unique set of difficulties for providers attempting to deploy broadband services. Yet despite these obstacles, the data described in the preceding section [of the *Fourth Report*] demonstrate that significant progress is being made towards ubiquitous availability of advanced services in rural areas.<sup>5</sup>

Group members have overcome many obstacles on their way to offering broadband services to rural Americans. Moreover, through the use of MDS and ITFS spectrum, Group members also pioneered the delivery of multichannel video services in rural America when such services were not otherwise available. For instance, **Central Dakota TV, Inc.** has been providing video service on MDS channels in rural communities near Carrington and

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<sup>3</sup> Availability of Advanced Telecommunications Capability in the United States, *Fourth Report to Congress*, FCC 04-208, p.8 (2004) (“*Fourth Report*”) (emphasis in original).

<sup>4</sup> *Id.*, pp. 8-9.

<sup>5</sup> *Id.*, p.38. As Commissioner Jonathan S. Adelstein stated: “Broadband gives businesses in Rural America the tools they need to compete across the globe. Access to telemedicine and distance learning, and the vast array of resources available through the Internet, gives rural Americans the same opportunities that others enjoy.” Statement of Commissioner Jonathan S. Adelstein, Dissenting, Availability of Advanced Telecommunications Capability in the United States, *Fourth Report to Congress*, FCC 04-208 (2004).

Jamestown, North Dakota since 1990, and also uses that spectrum to provide high-speed wireless broadband services to customers that have no other broadband option. **Evertex, Inc.** utilizes all of the capacity on its MDS licenses to provide video and broadband services in the agriculturally-based communities of Everly, Palmer and Sioux City, Iowa, utilizing Channel MDS-1 capacity for upstream communications to the base station. Evertex has provided video services for 16 years and broadband for the last five, and currently serves nearly 900 customers, the overwhelming majority of whom have no other choice in service. **Northern Rural Cable TV, Inc.** began providing multichannel video operations on MDS frequencies in the Aberdeen-Bath, South Dakota area in 1988, and now provides multichannel video services to 1,240 customers and wireless broadband services to 540 customers. **Northwest Communications Cooperative** has, since 1990, provided multichannel wireless video services in northwest North Dakota, and today serves approximately 700 subscribers. Using Channel MDS-1 for upstream, it also provides broadband service to approximately 300 subscribers. **Polar Communications** offers data services over MDS spectrum in Grand Forks, North Dakota and other communities in northeast North Dakota and northwest Minnesota, and uses Channel MDS-1 for the upstream data path. **Santel Communications Cooperative, Inc.** operates a wireless broadband system serving 790 customers in the Mitchell (Hillside), South Dakota area, using Channel MDS-1 for upstream communications. **United Telephone Mutual Aid Corporation** began its MDS video service in 1990, and now provides 18 channels of multichannel video service to approximately 1,000 subscribers in Milton and Egeland, North Dakota. In partnership with Polar Communications, United also provides data services using Channel MDS-1 for upstream communications. **West River Cooperative Telephone Co. and G.W. Wireless Incorporated Partnership** recently purchased the Rapid City,

South Dakota BTA and are developing a business plan to deploy service in rural communities in western South Dakota and Wyoming.

In many cases, the Group members provide multichannel video service where there is no cable, and today provide the only alternative to the DBS services offered by EchoStar and DirecTV. Likewise, the broadband services they provide are available in many areas where DSL and cable modem services are not, and thus provide the only means for consumers to obtain broadband access. Regardless of whether Channel MDS-1 is used to provide video, downstream data or upstream data, in many rural systems this spectrum is of critical importance.

As discussed below, the members of the Group are very concerned that the Commission's rules create an environment where "mutually-destructive" interference will be inevitable.<sup>6</sup> Though this situation is untenable in and of itself, Globalstar's proposal to remedy the interference by limiting BRS-1 operations to the top 35 Metropolitan Statistical Areas ("MSAs") would cut off video and broadband services to rural Americans that will lose the benefits of choice.<sup>7</sup> Moreover, Commission policies do not permit displaced licenses to be eliminated where, as here, the licensees are required as part of a relocation process to be "no worse off" than before.<sup>8</sup> Consequently, there being no better alternative to preserving existing broadband and video services, the Commission should eliminate the

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<sup>6</sup> Petition for Reconsideration of the Wireless Communications Association International, Inc., filed September 8, 2004, p.9.

<sup>7</sup> See Globalstar Petition, p.12. In those 35 MSAs, Globalstar further proposes to reduce BRS base station power from 2000 watts EIRP to 600 watts EIRP and limit out-of-band BRS-1 emissions, for 99% of the time, to an aggregate not to exceed -209 dBw/Hz at any point outside of the 35 MSAs in the 2483.5-2500 MHz band.

<sup>8</sup> See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, *Second Report and Order*, 17 FCC Rcd 23193, 23212-13 (2002) (reallocating 2150-2155 MHz, but deferring identification of replacement spectrum); Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2002) ("*AW'S Third Order*") (reallocating 2155-2160/62 MHz but deferring identification of replacement spectrum).

co-primary allocation for CDMA MSS in the 2496-2500 MHz band and reject Globalstar's proposal.

### **Discussion**

In the *BRS/EBS Order* adopted on the same day as the *Order*, the Commission redesignated the 2495-2500 MHz band to include fixed and mobile services (except aeronautical mobile services) on a primary basis, stating that:<sup>9</sup>

The allocation will allow us to group together spectrum “neighbors” with technically compatible characteristics. . . . Doing so allows us to integrate the spectrum at 2495-2500 MHz into a larger 2495-2690 MHz band plan and, as a result, establish a new BRS/EBS band plan and adopt service rules for both the 2495-2500 MHz and 2500-2690 MHz band that will allow for the provision of similar services.<sup>10</sup>

Given that Channels MDS-1 and MDS-2/2A were required to be relocated, the Group agrees with the Commission's decision to integrate those channels into the BRS/EBS band and regulatory structure. The record in the *BRS/EBS Order* demonstrates that the Commission considered and rejected a number of other alternatives for relocating BRS spectrum, and found that the 2495-2500 MHz band was the only viable replacement spectrum.<sup>11</sup>

The Group disagrees, however, with the Commission's decision to make the 2496-2500 MHz spectrum “co-primary” with downlink CDMA MSS, especially since this decision ignores the large presence of Channel MDS-1 stations operating throughout rural America. In the *Order*, the Commission concluded, without any record evidence whatsoever, that CDMA MSS licensees providing downlink operations in the 2495-2500 MHz band should

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<sup>9</sup> Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (“*BRS/EBS Order*”). The Commission changed the name of the service from Multipoint Distribution Service (“MDS”) to Broadband Radio Service (“BRS”) and changed the name of the Instructional Television Fixed Service (“ITFS”) to the Educational Broadband Service (“EBS”).

<sup>10</sup> *Order*, ¶69.

<sup>11</sup> See *BRS/EBS Order*, ¶¶25-27.

be able to share this spectrum with BRS-1 licensees. This determination was premised on the erroneous presumption, rebutted above, that “BRS operations are likely to be in urban, suburban and somewhat developed rural areas while the greatest demand for CDMA MSS operations is likely to be in very rural and undeveloped areas with little or no existing communications infrastructure.”<sup>12</sup> Even Globalstar agrees that:

MDS-1 is already licensed *nationwide*, either through pre-auction site-based licensing, or through geographic area licensing in Auction No. 6. Thus, the assumption that BRS operations in the 2496-2502 MHz band are more likely to occur in urban areas is flawed, because the current MDS-1 licensees that will move into that band are already licensed nationwide.”<sup>13</sup>

It thus appears that the Commission did not appreciate the extent to which Channel MDS-1 licensees provide service in rural areas of the country.

The Commission also did not appreciate the extent to which these licensees would suffer harmful interference if the 2496-2500 MHz band were shared. According to WCA, the co-primary designation of those frequencies would result in “debilitating”<sup>14</sup> interference and would be contrary to previous FCC findings that satellite downlink and terrestrial systems cannot co-exist on the same frequencies.<sup>15</sup> Both Globalstar and WCA submitted evidence showing the unavoidable presence of interference resulting from operation of CDMA MSS downlink facilities and BRS-1 facilities in the same areas.<sup>16</sup>

To address this harmful interference, Globalstar disingenuously proposes a “geographical” solution, one that would allow BRS-1 operations to operate only in the top 35 MSAs.<sup>17</sup> Of course, this is not a geographical solution, but rather one that would simply take spectrum away from incumbents who have, in some cases, been providing service to

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<sup>12</sup> *Order*, ¶72.

<sup>13</sup> Globalstar Petition, p.11 (footnote omitted) (emphasis in original).

<sup>14</sup> WCA Petition, p.15.

<sup>15</sup> *Id.*, pp.9-11.

<sup>16</sup> *Id.*, Attachment A; Globalstar Petition, Technical Appendix.

<sup>17</sup> Globalstar Petition, Technical Appendix, p.2.

rural Americans for more than 15 years. By contrast, WCA's proposal to relocate BRS-1 to the 2495-2500 MHz band and allocate BRS-1 spectrum on a primary basis would allow these services to continue and expand.

Not only would Globalstar's confiscatory plan be fundamentally and egregiously unfair, it would also contravene existing Commission policies intended to ensure that licensees required to be relocated to replacement spectrum be no worse off than before. In the *AWS Further Notice*, the Commission proposed that MDS-1 licensees required to relocate should "be entitled to comparable facilities and/or adequate replacement spectrum."<sup>18</sup> Under this policy, "incumbents must be provided with replacement facilities that allow them to maintain the same service in terms of throughput, reliability and operating costs."<sup>19</sup> Likewise, when it adopted relocation rules for the microwave service, the Commission announced that its "goal is to ensure that incumbents are no worse off than they would be if relocation were not required."<sup>20</sup>

Globalstar doesn't propose to "replace" the spectrum that would be reallocated from rural BRS-1 licensees – it simply chooses to ignore their long-standing presence and importance in providing vital communications services to rural Americans. Moreover, its proposal would prevent rural operators from expanding service on BRS-1 in their BTAs, a right the Commission recently affirmed.<sup>21</sup> The Commission should not lose sight of the fact that holders of BTA authorizations paid the government, pursuant to a government-

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<sup>18</sup> Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Services, Including Third Generation Wireless Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 16043-61 (2001) ("*AWS Further Notice*"). See also Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *Second Report and Order*, 8 FCC Rcd 6495, 6506 (1993).

<sup>19</sup> *AWS Third Order*, p.2256.

<sup>20</sup> See Amendments to the Commission's Rules Regarding a Plan for Sharing Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8825, 8843 (1996).

<sup>21</sup> See *BRS/EBS Order*, ¶54 (consistent with other services, where license in a BTA is cancelled or forfeited, the right to operate in the BTA "automatically reverts" to the holder of the BTA authorization).

sponsored auction of spectrum, for a ten-year exclusive right to file for available MDS channels.

As stated above, the Group believes that Commission's decision to require sharing of the BRS-1 spectrum with MSS downlink spectrum would make the members of the Group "worse off" in contravention to law and policy. Relying on the faulty premise that BRS would be deployed in "urban, suburban and somewhat rural" markets and MSS downlink facilities would be deployed in rural areas, the *Order* substitutes the primary allocation at 2150-2156 MHz with a co-primary allocation at 2495-2500 MHz. If forced to share this spectrum with MSS downlink facilities, the end result will be unreliable service at best and no service at worst.

Globalstar's proposal would eliminate BRS-1 video and broadband service in areas where it is the only option and where it is the only competitor to other distribution systems. The Commission's solution also falls short, failing to recognize the ubiquitous nature of Channel MDS-1 service and the destructive interference that would result. The best solution is the one proposed by WCA – to relocate BRS-1 to the 2495-2500 MHz band and to allocate BRS-1 spectrum on a primary basis.



### **Conclusion**

For the reasons stated above, the BRS Rural Advocacy Group respectfully urges the Commission to eliminate the co-primary allocation for CDMA MSS in the 2496-2500 MHz band and reject Globalstar's proposal to eliminate BRS-1 service in all but the top 35 MSAs.

Respectfully submitted,

### **BRS RURAL ADVOCACY GROUP**

October 27, 2004

By: /s/ Stephen E. Coran

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**Exhibit 1**

**The BRS Rural Advocacy Group**

**Central Dakota TV, Inc.**

<u>Market</u>	<u>Channel(s)</u>	<u>Call Sign</u>
Carrington, ND	E1-E4	WLW751
Carrington, ND	F1-F4	WLW752
Carrington, ND	H1	WNTB718
Carrington, ND	H2	WNTE464
Carrington, ND	H3	WNTF478
Jamestown, ND	F2-F3	WLW752-B01 (booster)

**Evertex, Inc.**

<u>Market</u>	<u>Channel(s)</u>	<u>Call Sign</u>
Ft. Dodge, IA	BTA	B150
Mason City, IA	BTA	B285
Mason City, IA	MDS-1	KNSC425
Palmer, IA	MDS-1	KNSC628
Palmer, IA	MDS-1	KNSC628-H01 (hub)
Palmer, IA	B4	WMY277
Palmer, IA	C2-C4	WMY279
Palmer, IA	D2-D4	WMY278
Palmer, IA	E1-E4	WLK383
Palmer, IA	F1-F4	WLK386
Palmer, IA	H1	WNEZ929
Palmer, IA	H2	WNTB279
Palmer, IA	H3	WNTB791
Sioux City, IA	BTA	B421
Sioux City, IA	MDS-1	KNSE373
Sioux City, IA	MDS-2A	KNSE374
Sioux City, IA	E1-E4	KNSC877
Sioux City, IA	F1-F4	KNSC878
Sioux City, IA	H1	KNSC829
Sioux City, IA	H2	KNSC830
Sioux City, IA	H3	KNSC831
Spencer, IA	MDS-1	KNSD361
Spencer, IA	MDS-2A	KNSC629
Spencer, IA	C1-C4	WMX677
Spencer, IA	E1-E4	WLK403
Spencer, IA	F1-F4	WLK267
Spencer, IA	H1	WNEZ928
Spencer, IA	H2	WNTB278
Spencer, IA	H3	WNTB792

**Northern Rural Cable TV Cooperative, Inc.**

<u>Market</u>	<u>Channel(s)</u>	<u>Call Sign</u>
Aberdeen, SD	BTA	B001
Aberdeen, SD	MDS-1	KNSC501
Aberdeen, SD	MDS-2A	KNSC502
Aberdeen, SD	E1-E4	WLK408
Aberdeen, SD	F1-F4	WLK409
Bath, SD	MDS-1	WMY463
Bath, SD	MDS-1	WMY463-H01 (hub)
Bath, SD	C1-C4	WMX707
Bath, SD	H1	WNEX688
Bath, SD	H2	WNEX765
Bath, SD	H3	WNTI409
Bath, SD	G1-G4	WMX708
Bath, SD	H1-H3, G1-G4	WMX708-H01 (hub)
Huron, SD	BTA	B199
Pierre, SD	E1-E4	KNSC241
Pierre, SD	F1-F4	KNSC242

**Northwest Communications Cooperative**

Bowbells, ND	D1-D4	WMX663
Bowbells, ND	E1-E4	WLW987
Bowbells, ND	F1-F4	WLW988
Bowbells, ND	G1-G4	WMX664
Bowbells, ND	H1-H3	WNTB443
Epping, ND	MDS-1	KNSD904
Epping, ND	D1-D4	WMX665
Epping, ND	E1-E4	WLW748
Epping, ND	F1-F4	WLW968
Epping, ND	G1-G4	WMX666
Epping, ND	H1-H3	WNTA470

**Polar Communications**

Grand Forks, ND	MDS-1	KNSC236
Grand Forks, ND	MDS-2A	KNSE530
Grand Forks, ND	MDS-1, MDS-2A	KNSC236-H01 (hub)
Grand Forks, ND	E1-E4	KNSE531
Grand Forks, ND	F1-F4	WLW888
Grand Forks, ND	H1-H3	KNSE532
Lakota, ND	MDS-1	KNSE544
Lakota, ND	MDS-2A	KNSE548
Lakota, ND	E1-E4	KNSE545
Thief River Falls, MN	MDS-1	KNSE546
Thief River Falls, MN	MDS-2A	KNSE547
Thief River Falls, MN	E1-E4	KNSE543

**Santel Communications Cooperative, Inc.**

Mitchell, SD	BTA	B301
Hillside, SD	MDS-1	KNSC685
Hillside, SD	MDS-2A	KNSC245
Mitchell, SD	E1-E4	WGW419
Mitchell, SD	F1-F4	WHD364
Hillside, SD	H1	KNSC243
Hillside, SD	H2	KNSC246
Hillside, SD	H3	KNSC244
Mount Vernon, SD	E1-E4	WGW419 (booster)

**United Telephone Mutual Aid Corporation<sup>22</sup>**

Egeland, ND	MDS-1	WMY208
Egeland, ND	B1-B4	WMX715
Egeland, ND	C1-C4	WMX714
Egeland, ND	E1-E4	WLW986
Egeland, ND	F1-F4	WLW982
Egeland, ND	H1	WNTA554
Egeland, ND	H2	WNTA471
Egeland, ND	H3	WNTC634
Milton, ND	MDS-1	WMY447
Milton, ND	D1-D4	WMX661
Milton, ND	E1-E4	WLW984
Milton, ND	F1-F4	WLW985
Milton, ND	G1-G4	WMX662
Milton, ND	H1	WNEZ913
Milton, ND	H2	WNEZ907
Milton, ND	H3	WNTC633

**West River Cooperative Telephone Co. and G.W. Wireless Incorporated Partnership**

Rapid City, SD	BTA	B369
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<sup>22</sup> Stations WLW982, WNTA471, WLW985 and WNEZ907 are licensed to Cavalier Rural Electric Cooperative and leased to United Telephone Mutual Aid Corporation.